

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order should be affirmed.

This claim hinges on claimant's credibility. Claimant alleges that on September 27, 2001, he began performing one-handed work with his right hand, which consequently injured his right thumb and caused swelling near the base of the thumb. The issue presented to the Judge was whether claimant's need for medical treatment to the right thumb was directly related to that one-handed work or whether the need for treatment was directly related to some other cause, including an injury sustained while trying to catch a football.

At the December 12, 2001 preliminary hearing, claimant testified how he worked using only his right hand installing insulation in 10-foot walls, building ceilings, washing toilets, picking up trash and taping buildings. Claimant also described a specific incident on October 8, 2001, in which his right thumb popped. Furthermore, claimant testified that the thumb injury he sustained while trying to catch a football involved a different joint than the one that was injured at work. That testimony was supported by one of respondent's witnesses, Jake Hall, who testified he saw swelling towards the tip of claimant's right thumb when he talked with claimant immediately before claimant commenced working on October 8, 2001.

In the December 14, 2001 Order, Judge Howard did not specifically comment upon claimant's credibility. But the Judge apparently found claimant credible as the Judge granted claimant's request for benefits, despite conflicting evidence presented by respondent's witnesses.

At this juncture of the claim, the Board is also persuaded that claimant either injured or aggravated his right thumb while working for respondent with his right hand only from September 27 through October 8, 2001, creating the present need for medical treatment. The Board concludes that claimant's accidental injury arose out of and in the course of employment.

WHEREFORE, the Board affirms the December 14, 2001 Order entered by Judge Howard.

IT IS SO ORDERED.

Dated this ____ day of February 2002.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Richard J. Liby, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Workers Compensation Director